

TITLE 43. PROFESSIONS AND BUSINESSES  
CHAPTER 6. AUCTIONEERS

§ 43-6-1. Definitions

As used in this chapter, the term:

(1) "Absolute auction" shall mean that ownership and title of real or personal property offered at auction must be conveyed to the high bidder without reservation and without any competing bids of any type by the owner or an agent of the owner of the property.

(2) "Apprentice auctioneer" means any person who for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal or engage in any auctioning activity and who is duly licensed under this chapter or any person who is not employed by an auctioneer and who conducts the business of auctioning in cases where gross sales do not exceed \$2,000.00 per auction and who is duly licensed under this chapter.

(3) "Auction business" or "business of auctioning" means the performing of any of the acts of an auctioneer or apprentice auctioneer, including bid calling for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction or offering, negotiating, or attempting to negotiate a listing contract for the sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale.

(4) "Auction with reserve" shall mean that the seller reserves the right to refuse any and all bids.

(5) "Auctioneer" means any person who, for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale and has been duly licensed, as provided in this chapter.

(6) "Commission" means the Georgia Auctioneers Commission.

(7) "Company" means an association, partnership, limited liability company, corporation, or sole proprietorship and shall also include the officers, directors, members, and employees of such entities.

(8) "Goods" means any chattel, goods, merchandise, real or personal property, or commodities of any form or type which lawfully may be kept or offered for sale.

(9) "Person or persons" means an individual.

(10) "Ringperson" means any person employed directly by an auctioneer or auction company responsible for a sale who assists the auctioneer in the conduct of an auction, provided that such person shall not be permitted to call or chant a bid or negotiate a listing contract.

**HISTORY:** Code 1933, § 84-301A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1987, p. 596, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1989, p. 1409, § 1; Ga. L. 1990, p. 576, § 1; Ga. L. 1993, p. 123, § 21; Ga. L. 1993, p. 1030, § 1; Ga. L. 1996, p. 657, § 1.

#### § 43-6-2. Creation of commission; composition; terms of office; qualifications of members

(a) The Georgia Auctioneers Commission is created under the Secretary of State and the division director.

(b) The commission shall be composed of six members, each of whom shall be appointed by the Governor, with the approval of the Secretary of State, and confirmed by the Senate. Appointments shall be for a term of five years, to end on the anniversary date of original appointments, except appointments to fill a vacancy which shall be for the unexpired term only.

(c) Five members of the commission shall be licensed auctioneers who shall have been residents of this state and actively engaged in the auctioneering business for at least five years. One member shall be a consumer advocate and a resident of this state and shall have no connection whatsoever with the practice or profession of auctioneering.

**HISTORY:** Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 1; Ga. L. 1996, p. 657, § 2; Ga. L. 2000, p. 1706, § 19.

#### § 43-6-3. Selection of chairman; rules and regulations; meetings

(a) The commission shall organize by selecting from its members a chairman and may do all things necessary and convenient to carry this chapter into effect and, from time to time, may promulgate necessary rules and regulations to carry out this chapter.

(b) The commission shall meet as necessary and shall remain in session as long as the chairman deems it necessary to give full consideration to the business before the commission.

**HISTORY:** Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1990, p. 576, § 2; Ga. L. 1996, p. 657, § 3.

#### § 43-6-4. Reimbursement of commission members

Each member of the commission shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

**HISTORY:** Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1.

#### § 43-6-5. Commission reports to Governor and General Assembly

Reserved. Repealed by Ga. L. 1990, p. 576, § 3, effective March 30, 1990.

#### § 43-6-6. Seal; receipt of copies of records and papers as evidence

The commission shall adopt a seal, which may be either an engraved or ink stamp seal, with the words "State Auctioneers Commission, State of Georgia" and such other devices as the commission may desire included thereon, by which it shall authenticate the acts of the commission. Copies of all records and papers in the office of the commission certified by the signature of the commission chairman and the seal of the commission shall be received in evidence in all cases equally and with like effect as the originals.

**HISTORY:** Code 1933, § 84-306A, enacted by Ga. L. 1975, p. 53, § 1.

#### § 43-6-7. Adoption of rules and regulations

The commission is authorized to adopt rules and regulations relating to the professional conduct of licensees, a code of ethics, and the administration of this chapter. Such rules and regulations shall not apply to and shall not set schedules of fees or commissions for the services of the licensees.

**HISTORY:** Code 1933, § 84-305A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 1030, § 2.

#### § 43-6-8. Authority to regulate issuance of licenses, to revoke or suspend licenses, and to censure licensees

Except as provided in Code Section 43-1-4, the commission shall have the power to regulate the issuance of licenses, to revoke or suspend licenses issued under this chapter, and to censure licensees for any violation of this chapter.

**HISTORY:** Code 1933, § 85-308A, enacted by Ga. L. 1975, p. 53, § 1.

#### § 43-6-9. License requirement for auctioneers and apprentice auctioneers; registration for companies conducting auctions; restrictions as to sales of real property

(a) It shall be unlawful for any person, directly or indirectly, to engage in, conduct, advertise, hold himself out as engaging in or conducting the business of, or act in the capacity of, an auctioneer or apprentice auctioneer within this state without first obtaining a license as an auctioneer or apprentice auctioneer, as provided in this chapter, unless he

is exempted from obtaining a license under Code Section 43-6-24.

(b) It shall be unlawful for any licensed auctioneer or apprentice auctioneer to act in such capacity in the sale of real property unless such auctioneer or apprentice auctioneer shall also be licensed as a real estate broker, associate broker, or salesperson under Chapter 40 of this title; provided, however, that any auctioneer or apprentice auctioneer who was licensed as such by this state prior to July 1, 1978, and who, prior to December 31, 1984, submits proof to the commission that he has been auctioning real property for five years or more immediately prior to the date of application shall not be required to meet the provisions of this subsection but such person shall not thereby be construed to be a real estate broker, associate broker, or salesperson under Chapter 40 of this title.

(c) It shall be unlawful for any company, directly or indirectly, to engage in, conduct, advertise, hold itself out as engaging in or conducting the business of auctioning without first being registered by the commission, unless such company is exempted from obtaining a license pursuant to Code Section 43-6-24.

**HISTORY:** Code 1933, § 84-302A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 2; Ga. L. 1987, p. 596, § 2.

#### § 43-6-10. Application by person for license

Any person desiring to act as an auctioneer or apprentice auctioneer must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business; if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted; and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the municipality, with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require.

**HISTORY:** Code 1933, § 84-309A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 22.

#### § 43-6-11. Qualifications of applicants

(a) No auctioneer's or apprentice auctioneer's license shall be issued to any person who has not attained the age of 18 years, nor to any person who is not a resident of this state unless he has fully complied with Code Section 43-6-12, nor to any person who is not a citizen or has not filed his intent to become a citizen of the United States.

(b) Each applicant for an auctioneer's or apprentice auctioneer's license shall be required

to pass an examination in a form prescribed by the commission.

(c) Each applicant for licensure as an auctioneer or apprentice auctioneer must prove to the commission that he is reputable, trustworthy, honest, and competent to transact the business of an auctioneer or of an apprentice auctioneer in such a manner as to safeguard the interest of the public.

(d) Each applicant for licensure as an auctioneer shall have successfully graduated from an accredited high school or obtained a GED and have graduated from an auctioneers school approved by the commission prior to making an application for an auctioneer's license.

(d.1) On and after December 31, 1995, no apprentice auctioneer's license shall be issued or renewed.

(e) No apprentice auctioneer may use an auction where gross sales did not exceed \$2,000.00 for the purpose of qualifying for licensure as an auctioneer under paragraph (1) of subsection (d) of this Code section.

**HISTORY:** Code 1933, § 84-311A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1686, §§ 1, 2; Ga. L. 1989, p. 1409, § 2; Ga. L. 1991, p. 801, § 1; Ga. L. 1993, p. 1030, § 3; Ga. L. 1996, p. 657, § 4.

#### § 43-6-11.1. Application by company for registration; exemptions; trust accounts

(a) No company shall be registered to engage in the business of auctioning unless such company furnishes to the commission:

(1) A completed application form as prescribed by the commission;

(2) Satisfactory evidence approved by the commission that the company employs or shall employ an auctioneer licensed under the provisions of this chapter to conduct any auctions in this state; and

(3) If such company is a foreign corporation, satisfactory evidence approved by the commission that such company is authorized to do business in this state and is registered in accordance with Chapter 3 of Title 14.

(b) A company owned by or employing one or more full-time auctioneers licensed by the commission may be exempt from subsection (a) of this Code section, provided that such company is directly supervised by a licensed auctioneer.

(c) A company licensed under Chapter 47 and Chapter 48 of this title which engages in the business of auctioning on behalf of insurance companies and financial institutions shall not be subject to the requirements of paragraph (3) of Code Section 43-6-18.

(d) An auction company must maintain at all times an active trust account and register

such account with the Georgia Auctioneers Commission.

**HISTORY:** Code 1981, § 43-6-11.1, enacted by Ga. L. 1987, p. 596, § 3; Ga. L. 1989, p. 1409, § 3; Ga. L. 1991, p. 801, § 2; Ga. L. 1996, p. 657, § 5.

§ 43-6-11.2. Expiration of licenses; waiver of continuing education requirement; rules and regulations

(a) Licenses for auctioneers shall expire biennially as provided in Code Section 43-1-4. The commission shall be authorized to require persons seeking renewal of an auctioneer's license under this chapter to complete commission approved continuing education of not more than eight hours biennially.

(b) The commission shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the commission deems appropriate.

(c) The commission shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each biennial renewal cycle which begins after the 1990-1991 renewal.

**HISTORY:** Code 1981, § 43-6-11.2, enacted by Ga. L. 1991, p. 799, § 1.

§ 43-6-12. Reciprocity; nonresident license requirement; designation of agents for service of process

(a) Any resident of another state who holds a current license as an auctioneer or an apprentice auctioneer under the laws of any other state having requirements similar to those in this chapter may, at the discretion of the commission, be issued a license to practice as an auctioneer or an apprentice auctioneer in this state without written examination upon the payment of the fees as required by the commission.

(b) Any resident of another state which does not have a law regulating the licensing of auctioneers but who holds a current and valid license in a state which has a reciprocal licensing agreement with Georgia may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without examination upon the payment of a fee as required by the commission.

(c) Prior to the issuance of a license to a nonresident auctioneer or apprentice auctioneer, such nonresident shall file with the commission a designation in writing that appoints the commission or a deputy to be designated by it to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the commission chairman, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force

and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of all such process or notices, the commission or the deputy as designated by it shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee.

**HISTORY:** Code 1933, § 84-314A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 3; Ga. L. 1987, p. 596, § 4; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 799, § 2; Ga. L. 1993, p. 1030, § 4; Ga. L. 2000, p. 1589, § 3.

#### § 43-6-12.1. Proof of residence

In order for an applicant to obtain an auctioneer's license, such applicant must show proof of a residence.

**HISTORY:** Code 1981, § 43-6-12.1, enacted by Ga. L. 1996, p. 657, § 6.

#### § 43-6-13. License fees; effect of nonpayment of checks submitted as fee

(a) The division director, at the time an application for licensure is submitted, shall collect from an applicant a fee in an amount established by the commission. The commission may establish separate schedules of fees for such licenses depending on whether the applicant begins to do business prior to or after the issuance of any such license.

(b) After the issuance of the first license to an applicant, such license shall cover the remaining period of the biennium.

(c) The auctioneer's biennial license fee shall be an amount established by the commission and the apprentice auctioneer's biennial license fee shall be an amount established by the commission. This Code section shall not obviate any other fees or conditions required to maintain such license in accordance with this chapter.

(d) Any check presented to the division director as a fee for either an original or renewal license or for examination for license, which is returned unpaid, shall be cause for revocation or denial of a license.

(e) Notwithstanding any other fee prescribed in this chapter, a company shall be required to pay registration and renewal fees in an amount established by the commission.

**HISTORY:** Code 1933, § 84-312A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 596, § 5; Ga. L. 1991, p. 799, § 3; Ga. L. 2000, p. 1706, § 19.

§ 43-6-14. Affixing seal to licenses; delivery of licenses; display of licenses; pocket card; branch office licenses

Each license shall have placed thereon the seal of the commission. The license of each auctioneer or apprentice auctioneer shall be delivered or mailed to his place of business and shall be displayed conspicuously at all times in the office of the licensee. The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensed auctioneer or apprentice auctioneer, as the case may be, stating the period of time for which fees have been paid and including, on apprentice auctioneers' cards only, the name and address of the auctioneer for whom such apprentice auctioneer is acting. If an auctioneer maintains more than one place of business within the state, a branch office license shall be issued to such auctioneer for each branch office so maintained by him upon the payment of a biennial fee in an amount established by the commission; and the branch office license shall be conspicuously displayed in each branch office.

**HISTORY:** Code 1933, § 84-316A, enacted by Ga. L. 1975, p. 53, § 1.

§ 43-6-14.1. Carrying license identification card required

All licensees must carry on their person, when participating in the auctioneering business in any capacity, their Georgia auctioneer's license identification card and must present such card upon demand by any official of the State of Georgia.

**HISTORY:** Code 1981, § 43-6-14.1, enacted by Ga. L. 1996, p. 657, § 7.

§ 43-6-15. Surety bond

Reserved. Repealed by Ga. L. 1989, p. 1409, § 4, effective July 1, 1989.

§ 43-6-16. Grounds for refusal to issue license

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of auctioneer or apprentice auctioneer in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission shall grant a license to a corporation, limited liability company, or partnership only if the stockholder, member, or partner having a controlling interest therein bears a good reputation for honesty, trustworthiness, and integrity.

(b) Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of any other crime in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction, in itself, may be a sufficient ground for refusal of a license.



(c) Where an applicant has made a false statement of material fact on his application, such false statement, in itself, may be sufficient ground for refusal of a license.

(d) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license.

**HISTORY:** Code 1933, § 84-310A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 23.

#### § 43-6-17. Procedure upon nonacceptance of applications

If the commission, after an application in proper form has been filed and accompanied by the proper fee, shall refuse to accept the application, the commission shall provide for a hearing for such applicant in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Chapter 13 of Title 50.

**HISTORY:** Code 1933, § 84-315A, enacted by Ga. L. 1975, p. 53, § 1.

#### § 43-6-18. Grounds for revocation or suspension of licenses and censure of licensees

The commission may, upon its own motion, and shall, upon the signed complaint in writing of any person, investigate the actions of any auctioneer or apprentice auctioneer and shall have power to censure such licensee or to revoke or suspend any license issued under this chapter whenever such license has been obtained by false or fraudulent representation or the licensee has been found guilty of any unfair trade practices, including, but not limited to, the following:

(1) Making any substantial misrepresentation while describing any property, real or personal; using any false, deceptive, misleading, or untruthful advertising; or making any statements, either in person or through any form of advertising, which may create false or unjustified expectations of the services to be performed;

(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising an auction to be an absolute auction, but conducting it as an auction with reserve or otherwise;

(3) Failing to account for or remit, within 30 days unless otherwise provided by contract, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep such funds of others in an escrow or trustee account; provided, however, that the requirement of an escrow or trust account shall not apply to an apprentice auctioneer who conducts the business of auctioning where gross sales do not exceed \$2,000.00 per auction;

(4) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;

(5) Violation of any rule or regulation or code of ethics promulgated by the commission;

(6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;

(7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest dealings;

(8) Having had any license to practice a business or profession revoked, suspended, annulled, or sanctioned, or otherwise having had any disciplinary action taken by any other licensing authority in this or any other state; or

(9) Knowingly making any misleading, false, or deceptive statement on any application for a license under this chapter.

**HISTORY:** Code 1933, § 84-318A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1989, p. 1409, § 5; Ga. L. 1993, p. 1030, § 5; Ga. L. 1996, p. 657, § 8.

#### § 43-6-18.1. Inspector

The commission shall have an inspector with full inspection rights and privileges for all auctions conducted in this state. This inspector shall have the right to inspect any activity or lack thereof which may be a violation of this chapter or any documents or records pertaining to auction activities and to report any and all such violations or any improper or unlicensed practice, including but not limited to trust account violations.

**HISTORY:** Code 1981, § 43-6-18.1, enacted by Ga. L. 1993, p. 1030, § 6; Ga. L. 1996, p. 657, § 9; Ga. L. 2008, p. 1112, § 13/HB 1055.

#### § 43-6-18.2. Sanctions

After notice and opportunity for hearing as provided in Code Section 43-6-19, the commission, in its discretion, may sanction, as provided in Code Section 43-1-19 and Code Section 43-6-18, a company registered or required to be registered in accordance with this chapter.

**HISTORY:** Code 1981, § 43-6-18.1, enacted by Ga. L. 1987, p. 596, § 6; Code 1981, § 43-6-18.2, as redesignated by Ga. L. 1993, p. 1030, § 6.

#### § 43-6-19. Hearings regarding revocation or suspension of licenses or censure of licensees; appeals

Before the commission shall censure a licensee or before revoking or suspending a license, it shall provide for a hearing for such holder of a license in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with

Chapter 13 of Title 50.

**HISTORY:** Code 1933, § 84-319A, enacted by Ga. L. 1975, p. 53, § 1.

§ 43-6-20. Effect of revocation of auctioneer's license on licenses of apprentice auctioneers

The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within 90 days.

**HISTORY:** Code 1933, § 84-320A, enacted by Ga. L. 1975, p. 53, § 1.

§ 43-6-21. Notification of change of address; effect of apprentice's leaving auctioneer

(a) Should the auctioneer change his place of business, he shall notify the commission in writing within ten days of such change, and thereupon a new pocket card shall be granted to the auctioneer and to his apprentice auctioneers.

(b) When an apprentice auctioneer is discharged or terminates his employment with the auctioneer for any reason, it shall be the immediate duty of the auctioneer to deliver or mail by registered or certified mail or statutory overnight delivery to the commission the license of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under authority of his license, until the apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time.

**HISTORY:** Code 1933, § 84-317A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2000, p. 1589, § 3.

§ 43-6-22. Prerequisite for bringing action for compensation; power of commission to sue for violation

(a) No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that he was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose.

(b) The commission may bring an action for any violation of this chapter.

**HISTORY:** Code 1933, § 84-304A, enacted by Ga. L. 1975, p. 53, § 1.

§ 43-6-22.1. Auctioneers education, research, and recovery fund

(a) The commission is authorized and directed to establish and maintain an auctioneers education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of \$100,000.00 in the auctioneers education, research, and recovery fund from which any person, except bonding companies when they are not principals in an auction transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant to this chapter, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$10,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate or lots of personal property involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing payments from the fund for judgments, or any unsatisfied portion of judgments, in an aggregate amount of \$20,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in an auction transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$10,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the auctioneers education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the auctioneers education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the auctioneers education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee under this chapter for any act, representation, transaction, or conduct which is in violation of this chapter or of the regulations promulgated pursuant to this chapter, or which is in violation of Chapter 47 of this title or of the regulations promulgated pursuant to Chapter 47 of this title, which act occurred on or after January 1, 1992, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the commission, may apply to the court for an order directing payment out of the auctioneers education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show:

(A) That he is not a spouse of the judgment debtor or the personal representative of such spouse;

(B) That he has complied with all the requirements of this Code section;

(C) That he has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the application; and that, in such action, he had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) That he has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) That he has caused the judgment debtor to make discovery under oath concerning his property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) That he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) That by such search he has discovered no personal or real property or other assets liable to be sold or applied or that he has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied and that he has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) That the following items, if any, as recovered by him have been applied to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply

with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the auctioneers education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the auctioneers education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. If such license is that of a corporation, limited liability company, or partnership, the license of the supervising auctioneer of the corporation, limited liability company, or partnership shall automatically be revoked upon the issuance of a court order authorizing payment from the auctioneers education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the rate of 6 percent per annum, the amount paid from the auctioneers education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the auctioneers education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the auctioneers education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent per annum.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "auctioneers education, research, and recovery fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the interest from these investments shall be deposited to the credit of the auctioneers education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the auctioneers education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and any such filing shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf of and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the auctioneers education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited in the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission's attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds, in excess of the amount of \$100,000.00 required by subsection (b) of this Code section, regardless of whether such funds are from the auctioneers education, research, and recovery fund or from accrued interest thereon for the purpose of helping to underwrite the cost of education and research programs for the benefit of licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations; provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the auctioneers education, research, and recovery fund to be reduced to an amount less than \$100,000.00.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a minimum balance of \$100,000.00 is maintained in the auctioneers education, research, and recovery fund, may assess each licensee, only upon renewal of his license, an amount not to exceed \$150.00 per year.

**HISTORY:** Code 1981, § 43-6-22.1, enacted by Ga. L. 1991, p. 801, § 3; Ga. L. 1992, p. 2450, § 1; Ga. L. 1993, p. 123, § 24; Ga. L. 1999, p. 592, § 17; Ga. L. 2000, p. 1589, § 3.

## § 43-6-23. Injunctions

Whenever, in the judgment of the commission, any person has engaged in any acts or practices which constitute or will constitute a violation of this chapter, the Attorney General may bring an action in the name of the state in the superior court of the county in which venue is proper, to abate and temporarily and permanently to enjoin such acts and practices and to enforce compliance with this chapter. The plaintiff shall not be required to give any bond.

**HISTORY:** Code 1933, § 84-307A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43.

## § 43-6-24. Exceptions to operation of chapter

Except as otherwise provided in this chapter, this chapter shall not apply to any person acting as a receiver, trustee in bankruptcy, administrator, executor, or any such person acting under order of any court. This chapter shall not apply to any nonprofit organization conducting an auction where the funds are to be used in a way as to benefit persons with physical or mental disabilities or disorders or for research related to cures or prevention of such disabilities or disorders, nor shall this chapter apply to any auction conducted by a nonprofit organization where the funds are to be used for the preservation of wildlife or its habitats whether conducted by a licensed auctioneer or nonlicensed auctioneer so long as the nonprofit organization obtains a letter of exemption from the commission. This chapter shall not apply to any person acting as an auctioneer in the auction of livestock, forest products, or farm products in an auction facility which is licensed and bonded under the provisions of Article 3 of Chapter 6 of Title 4 or in an auction facility which is licensed under Code Section 10-4-101 or to any youth livestock auction, sponsored by a 4-H Club or the Future Farmers of America; provided, however, that such organization or agency must first obtain from the commission a letter of exemption. This chapter shall not apply to students of approved auctioneering schools during the term of their course of study. This chapter shall not apply to any person conducting a public sale of personal property pursuant to the provisions of Code Section 10-4-213. This chapter shall not apply to ringpersons as defined in Code Section 43-6-1.

**HISTORY:** Code 1933, § 84-303A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 1; Ga. L. 1987, p. 596, § 7; Ga. L. 1989, p. 1409, § 6; Ga. L. 1990, p. 576, § 4; Ga. L. 1993, p. 1030, § 7; Ga. L. 1994, p. 1391, § 1; Ga. L. 1996, p. 657, § 10.

### § 43-6-24.1. Liabilities of licensed auctioneer not relieved

Nothing in this chapter shall relieve an auctioneer licensed in this state of all his or her liabilities under this chapter.

**HISTORY:** Code 1981, § 43-6-24.1, enacted by Ga. L. 1993, p. 1030, § 8.



#### § 43-6-25. Penalty

Any person or corporation acting as an auctioneer or apprentice auctioneer within the meaning of this chapter without a license and any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00, by imprisonment for a term not to exceed 90 days, or both.

**HISTORY:** Code 1933, § 84-322A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43.

#### § 43-6-25.1. Local regulations and licensing

Nothing in this chapter shall prohibit any lawful regulation or licensing of auctioneers by any municipality, county, or other political subdivision of this state; provided, however, that no such political subdivision shall license any auctioneer required to be licensed by this chapter unless such auctioneer has been approved for licensure by the commission as required in this chapter.

**HISTORY:** Code 1981, § 43-6-25.1, enacted by Ga. L. 1987, p. 596, § 8.

#### § 43-6-26. Termination

Repealed by Ga. L. 1992, p. 3137, § 6, effective July 1, 1992.

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